

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0582V

UNPUBLISHED

THE ESTATE OF APOLINAR HASEM
PERDOMO FELIZ, by and through
Administrator, BIENCHIS Y. ESTEVA-
FELIZ,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: November 25, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

John Richard Taylor, Zaytoun Law Firm, Raleigh, NC, for petitioner.

Traci R. Patton, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On April 17, 2019, the Estate of Apolina Hasem Perdomo Feliz, by and through Administrator Biechis Y.L Esteva-Feliz, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.² (the “Vaccine Act”). Petitioner alleges that, due to a March 12, 2017 influenza (“flu”) vaccine, Apolinar Hasem Perdomo Feliz suffered from Guillain-Barre syndrome (“GBS”), which led to his subsequent death on April 21, 2017. Petition at 1, 9-12. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On May 19, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for GBS. On November 24, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded compensation as detailed below. Proffer at 2-3. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner:**

- A. A lump sum payment of \$425,000.00, representing the statutory death benefit (\$250,000.00) and past pain and suffering (\$175,000.00), in the form of a check payable to Petitioner; and**
- B. A lump sum payment of \$43,192.51, representing compensation for satisfaction of the State of North Carolina Medicaid lien, in the form of a check payable jointly to Petitioner and:**

Division of Health Benefits
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022
ID #: 949453747P

Petitioner agrees to endorse this payment to Division of Health Benefits for satisfaction of the Medicaid lien.

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

THE ESTATE OF APOLINAR HASEM)	
PERDOMO FELIZ, by and through)	
Administrator, BIENCHIS Y. ESTEVA-)	No. 19-582V
FELIZ,)	Chief Special Master Corcoran
Petitioner,)	ECF
v.)	SPU
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
Respondent.)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On April 17, 2019, Bienschis Y. Esteva-Felix (“petitioner”), as the Administrator of the Estate of Apolinar Hasem Perdomo Felix (“decedent”), filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended* (“Vaccine Act” or “Act”). Petitioner alleges that the decedent sustained Guillain-Barré syndrome (“GBS”) after an influenza (“flu”) vaccination on March 12, 2017, and that his GBS resulted in his death on April 21, 2017. GBS is an injury listed on the Vaccine Injury Table (“Table”) for the flu vaccine.

On May 15, 2020, respondent filed his Rule 4(c) report, conceding that entitlement to compensation was appropriate under the terms of the Vaccine Act. The Chief Special Master issued a Ruling on Entitlement on May 19, 2020, finding that petitioner was entitled to vaccine compensation.

I. Compensation for Vaccine Injury-Related Items

Based upon the evidence of record, respondent proffers that petitioner, as the administrator of the Estate of Apolinar Hasem Perdomo Felix, be awarded the following amounts of compensation:

- A. A payment of **\$250,000.00**, which represents compensation the statutory death benefit, *see* 42 U.S.C. § 300aa-15(a)(2);
- B. A payment of **\$175,000.00**, which represents compensation for past pain and suffering, *see* 42 U.S.C. § 300aa-15(a)(4); and
- C. A payment of **\$43,192.51**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of North Carolina may have against any individual as a result of any Medicaid payments the North Carolina Program has made to or on behalf of Apolinar Hasem Perdomo Felix from the date of his eligibility for benefits through the date of his death as a result of his vaccine-related injury suffered on or about March 12, 2017, under Title XIX of the Social Security Act, *see* 42 U.S.C. § 300aa-15 (g-h).

These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

The vaccine-injured person in this case, Apolinar Hasem Perdomo Felix, is deceased. Petitioner, Bienschis Y. Esteva-Felix, provided respondent with “Restricted Letters of Administration” from the State of North Carolina that authorized her “to pursue the Wrongful Death action,” but not to recover any assets, on behalf of the decedent’s estate.

All payments to petitioner should be issued to her as the administrator of Apolinar Hasem Perdomo Felix’s Estate. If petitioner is not authorized by a court of competent jurisdiction to receive funds on behalf of the Estate of Apolinar Hasem Perdomo Felix at the time payment is to be made, any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as administrator of and to receive funds on behalf of Apolinar

Hasem Perdomo Felix's estate, upon submission of written document of such appointment to the Secretary.

Respondent recommends the Chief Special Master's decision and the Court's judgment award the following:

- A. A lump sum payment of **\$425,000.00** representing the statutory death benefit (\$250,000.00) and past pain and suffering (\$175,000.00), in the form of a check payable to petitioner.
- B. A lump sum payment of **\$43,192.51**, representing compensation for satisfaction of the State of North Carolina Medicaid lien, in the form of a check payable jointly to petitioner and:

Division of Health Benefits
Office of the Controller
2022 Mail Service Center
Raleigh, NC 27699-2022
ID #: 949453747P

Petitioner agrees to endorse this payment to Division of Health Benefits for satisfaction of the Medicaid lien.

Respectfully submitted,

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C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
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s/Traci R. Patton
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Dated: November 24, 2020